IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7234 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMNIKLAL C MORAKHIA

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR DJ BHATT for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2000

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner and Mr. Bhatt for the respondent workman. The facts leading to the filing of this petition, in brief, are as under :

The respondent workman is an employee of the petitioner corporation working as a clerk in Chandola Depot of Ahmedabad Division. The respondent was appointed on 26th October, 1972 on probation for a period of one year and he become entitled to yearly increment in his pay scale of junior clerk on completion of the probation period, on and from the date 26th October, 1973. Therefore, his pay was fixed in the scale of Rs.105-265 which was revised and fixed at Rs.176.00 under the Settlement of 1973, and he was put in the scale of Rs.160-390. Thereafter, another Settlement was arrived at and made effective from 1.8.1979. Under the said settlement, service benefit was given in the pay scale on the basis of length of continuous service.The workmen were given option whether to accept new pay scale under the settlement or to continue in the old scales. The respondent had opted for the pay scales under the settlement and his pay was, therefore, fixed at Rs.385.00 p.m. after adding Rs.21.00 for service benefit as per the terms and conditions of the settlement as the workman had completed less than seven years' service on 1.8.1979 being the date on which the settlement came into force. The respondent, thereafter, raised an industrial dispute regarding his pay fixed under the Settlement of 1979 by making reference through his Union before the Industrial Tribunal, Ahmedabad vide Reference No. AIT-1075/84. In the said reference, the workman has filed his statement of claim and contended that he was entitled to service benefit of Rs.27.00 and not Rs. 21.0 as, according to the workman, he had completed seven years' service and he claimed that his pay should have been fixed at Rs.397.00 p.m. instead of Rs.385.00 fixed by the Corporation. The Tribunal, after hearing the parties and taking into consideration the evidence on record, allowed the said reference and directed the petitioner Corporation to pay the amount of difference since 1979,under its award dated 21.1.1990. Feeling aggrieved by the said award passed by the Tribunal, the petitioner Corporation has preferred this petition before this Court.

I have heard the learned advocates for the parties. I have also taken into consideration the documents on record. Very short question is required to be examined in this petition under Art. 227 of the Constitution of India. For deciding as to whether the tribunal has committed any error while granting service benefit of Rs.27.00 to the respondent workman or not, three dates are material and important and the petitioner has produced the necessary documents on record. At page 29 of the petition, the petitioner corporation has produced the order of the Divisional Controller bearing

No. 786 of 1972 dated 27.6.1972. Name of the petitioner appears at Sr.No. 2 in the said order. As per the said order, the petitioner has been appointed on time scale with effect from 23.5.1972. Under the said order, benefit of time scale has been given to the respondent after completion of 180 days' service and thereafter, the respondent was brought on time scale with effect from the said date mentioned in the order at page 29 of the petition. Another document is at page 30 of the petition which is an order of the Divisional Establishment bearing No. 774 of 1972. As per the said order at page 30 of the petition, the service of the respondent was terminated with effect from 30th June, 1972 on the ground that his service is no longer required due to monsoon. This order was passed by the Divisional Controller, ST, Ahmedabad on 24/27.6.1972 and the third is the order of the Divisional Establishment bearing No. 1159 of 1972, at page 31 of the petition. In the said order, the name of the respondent workman is appearing at Sr.No. 5. As per the said order, the respondent workman has been appointed on 26th October, 1972 temporarily on the post of clerk in the basic salary of Rs. 105-6-123-7-137-EB-8-225-10-265(M) on probation for a period of 12 months from the date of his appointment.

Now, the respondent is considering the date of 27th October, 1972 for not granting the benefit under the Settlement of 1979 as service benefit of Rs.27.00 as the respondent workman has not completed seven years' service on the date of settlement i.e. 1st August, 1979. The tribunal has taken into consideration the date of time scale i.e. date of 23.5.1972 and considering that date, the Tribunal has held that the respondent workman has completed seven years' service on 23rd May, 1979 and, therefore, the respondent workman is entitled to the service benefit of Rs. 27.00 in pursuance to the settlement of 1979, instead of Rs.21.00 as has been done by the petitioner Corporation.

I have gone through the entire award passed by the tribunal. I have also taken into consideration the reasons given by the tribunal in support of its ultimate conclusion. In ST Corporation, there is Settlement dated 5th March, 1962. As per Item NO. 25 thereof, it has been decided as under:

"The employees working for 180 days continuously including weekly off and other paid holidays will be brought on time scale of pay and will get all the benefits available to the employees on time

scale. Any absence on account of authorized leave will not be treated as a break for the above purpose and will not also be counted for service.

Instructions will be issued to the effect that no break should be given to the employees whose services are required continuously by the administration.

The employees on time scale whose services are not required during the monsoon and who are taken on in employment again after monsoon will be taken on time scale."

Now, it is not in dispute that the respondent was taken on time scale with effect from 23.5.1972 and his service has been terminated because of monsoon on 30.6.1972 and, thereafter, he was appointed on 26th October, 1972 but for giving him benefit of the settlement of 1979, his previous service which was rendered by the respondent has not been taken into consideration by the petitioner and as per the settlement dated 5th March, 1962, if the service of the workman has been terminated on account of monsoon and if he has been taken back in service thereafter,then, he must be taken on time scale and, therefore, date of time scale is very much important for the purpose of deciding the controversy involved in this petition. I am, therefore, of the opinion that the tribunal has rightly considered the date of time scale i.e. 23.5.1972 for granting the service benefit of Rs. 27.00 to the respondent workman in pursuance to the Settlement of 1979. I am of the opinion that the tribunal has not committed any error in passing the impugned award. Mr.Raval has not been able to point out any infirmity in the award of the tribunal. The award passed by the tribunal is quite just, reasonable and valid award and, therefore, this petition is required to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. Ad interim relief granted earlier shall stand vacated. There shall be no order as to costs.

This Court,while admitting this petition, has granted ad interim relief on 4.10.1990 and thereafter, on 1.4.1992, said ad interim relief granted on 4.10.1990 was ordered to continue till further orders on the condition that in case the petitioner loses in the petition and is required to make payment of the amount as directed in the award, the said amount shall be paid with 12 per cent

interest to the petitioner.

Therefore, since I have dismissed this petition, the petitioner is directed to pay to the respondent workman the difference of salary and benefits which are available to the respondent as per the impugned award with interest at the rate of 12% p.a. from the date of the petition 6th September, 1990 within the period of three months from the date of receipt of certified copy of this order.

7.3.2000. (H.K.Rathod,J.)

Vyas